

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10876 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KAMLABEN G CHOPADA

Versus

STATE OF GUJARAT

Appearance:

MR RK MISHRA	for Petitioners
MR YS LAKHANI	for Respondent No. 1, 5
SERVED BY DS	for Respondent No. 2
MR PV HATHI	for Respondent No. 3

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 26/02/96

ORAL JUDGEMENT

The petitioners have questioned legality and validity of an order of respondent no.3 District Development Officer, Jamnagar District, Jamnagar recorded on 27/9/1995k exercising powers under section 65 of the Bombay Land Revenue Code, 1879 ('B.L.R.Code' for short) on the ground that the order is illegal, irrelevant, based on extraneous consideration,

without jurisdiction and against the guidelines provided by the Government of Gujarat for granting non agricultural permission of a piece of land. Therefore, a prayer is that granting of permission for non agricultural land to be used and utilised for the purpose of construction of the houses or units for residential purposes is illegal, arbitrary, against the provisions of law, and without jurisdiction and therefore, violative of Articles 14 and 21 of the Constitution of India.

Short assemble of the fact giving rise to this petition be narrated at the outset :-

The petitioners are owners of agricultural land bearing survey nos. 25 and 26 situated at Shaktinagar within the area of Dharmpur in Jamnagar District. Agricultural land bearing survey no. 24 belongs to respondent no.5. Respondent no.5 applied for permission under section 65 of the B.L.R.Code. The petitioners had taken objections in writing that the land in question for which the permission was sought for is very fertiled land and with good farming activities and therefore, the permission should not be granted. In short, the permission sought by respondent no.5 under section 65 of the B.L.R.Code for conversion of his land from agricultural to non agricultural purpose, was strongly resisted and objected to by the petitioners.

After considering the facts and circumstances of the case and the objection raised by the petitioners and by due enquiries through Taluka Development Officer and other officers, respondent no.3 passed the impugned order granting permission for conversion of land of respondent no.5 from agricultural use to non agricultural one, with certain embargoes and qualifications on 27/9/1995.

Being aggrieved by the said order of respondent no.2, the District Development Officer, granting permission in respect of land bearing survey no.24 belonging to respondent no.5, the petitioners have challenged that order by filing this petition under Article 226 of the Constitution of India, inter alia, contending that there is violation of provisions of Articles 14 and 21 of the Constitution of India.

It may be noted that prima facie, it cannot be said that the impugned order is illegal or without jurisdiction in view of the specific averments made in Para 6 of the affidavit in reply though section 65 of the B.L.R.Code states that the powers are given to the Collector under section 65 of the B.L.R.Code. However in view of the specific averments made in Para 6 of the affidavit in reply, prima facie, it becomes clear that the powers exercisable under section 65 of the B.L.R.Code are delegated to the District Panchayat for the

purpose of non agricultural permission. Therefore, it cannot be said that the impugned order is, ex facie, illegal, unjust, without jurisdiction and unconstitutional on that count.

Firstly, this court is not inclined to entertain this petition on other contention as there are settled provisions in the B.L.R.Code for challenging the impugned order by filing appeal or revision under sections. 203 and 211 of the B.L.R.Code. Ordinarily, when efficacious alternative remedies are available, this court should be loath to interfere with the impugned order at this stage. Therefore, since this court found that the impugned order is not illegal, unjust and unconstitutional and since when there are specific provisions for appeal or revision against the impugned order, this court is not inclined to entertain this petition under Article 226 of the Constitution of India. Therefore, this petition is required to be rejected. Accordingly, the same is rejected at this stage.

It may be clarified that it will be open for the petitioners to pursue departmental remedy or other statutory remedy available under the provisions of the B.L.R.Code or under any other law. This court is not inclined to exercise its plenary, prerogative, extraordinary powers, equitable writ jurisdiction and grant relief thereunder in a petition under Art. 226 of the Constitution of India. Therefore, this petition is rejected, with no order as to costs.
